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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,271	07/07/2003	David C. Swenson	MSH - 243	7747
8131	7590	01/07/2005	EXAMINER	
MCKELLAR IP LAW, PLLC 784 SOUTH POSEYVILLE ROAD MIDLAND, MI 48640			LUONG, VINH	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/614,271

Applicant(s)

SWENSON, DAVID C.

Examiner

Vinh T Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.


**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
Vinh T. Luong  
Primary Examiner

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: PTO/SB/42.

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1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because the abstract:

(A) refers to purported merits or speculative applications of the invention; and

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(B) does not describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

Correction is required. See MPEP § 608.01(b).

4. The drawings were received on August 25, 2003. These drawings are not accepted by the Examiner because of the reasons, *e.g.*, listed in the objection below.

5. The drawings are objected to because:

(A) Applicant did not label "Replacement Sheet" in the page header;

(B) The various parts in Fig. 1 should be embraced by a bracket in order to show their relationship;

(C) The drawings must not use the same referential numeral to designate different things or *vice versa*. For example, Applicant uses the same referential numeral 11 to designate different openings as seen in Fig. 1. Applicant is respectfully urged to distinguish them by different referential numerals such as 11, 11', and 11''; and

(D) Each part of the invention such as the channel in claim 7 and the midpoint in claim 9 should be designated by a referential numeral or character.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

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drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) must be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed features such as the channel in claim 7 and the midpoint in claim 9 must be shown or the features canceled from the claims. *No new matter should be entered.*

7. The information disclosure statement filed July 7, 2003 has been considered. However, Applicant's list of cited reference in Form 1.501 is erroneous. Note that 37 CFR 1.501 quoted below is related to patent files, not application files:

37 CFR 1.501. Citation of prior art in patent files.

(a) At any time during the period of enforceability of a patent, any person may cite, to the Office in writing, prior art consisting of patents or printed publications which that person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of the patent. If the citation is made by the patent owner, the explanation of pertinency and applicability may include an explanation of how the claims differ from the prior art. Such citations shall be entered in the patent file except as set forth in §§ 1.502 and 1.902.

(b) If the person making the citation wishes his or her identity to be excluded from the patent file and kept confidential, the citation papers must be submitted without any identification of the person making the submission.

(c) Citation of patents or printed publications by the public in patent files should either:

(1) Reflect that a copy of the same has been mailed

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to the patent owner at the address as provided for in § 1.33(c); or  
in the event service is not possible

(2) Be filed with the Office in duplicate.

The instant application has not been matured to be a patent. Therefore, Applicant should have used form PTO-1449. See MPEP § 609.

8. The disclosure is objected to because of the following informalities:

(A) The specification must not use the same referential numeral to designate different things or *vice versa*. For example, Applicant uses the same referential numeral 11 to designate different openings as seen in Fig. 1. Applicant is respectfully urged to distinguish them by different referential numerals such as 11, 11', and 11''; and

(B) Each part of the invention such as the channel in claim 7 and the midpoint in claim 9 should be designated by a referential numeral or character.

Appropriate correction is required.

9. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter such as "a channel" in claim 7 and the midpoint in claim 9. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction is required.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 2 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear:

(A) whether the term that appears at least twice such as "a fastening device" in

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dependent claim 2 refers to the same or different things. See MPEP § 2173.05(o). Applicant is respectfully urged to identify each claimed element with reference to the drawings; and

(B) which structure(s) define(s) the channel in claim 7. Applicant is respectfully urged to identify each claimed element with reference to the drawings.

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1, 3-6, 8-12, and claim 2, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kotoc (US Patent No. 3,822,609).

Regarding claim 1, Kotoc teaches a rod assembly comprising:

(i) two symmetrical rods 1 and 2 of equivalent size; each said rod 1 or 2 manufactured of modified metal; each said rod 1 or 2 comprising a central beam S having a near end and a distal end and an inside wall surface (unnumbered. See Attachment 1); each distal end terminating in a first arcuate configuration (Att. 1); each near end terminating in a second arcuate configuration (Att. 1) such that upon joining the rods 1 and 2 together the first arcuate configurations form a first circle  $h_2$  and the second arcuate configurations form a second circle  $h_1$ ; each of the arcuate configurations having a near end and a distal end wherein each distal end has an opening (Att. 1) at the terminus thereof to receive a fastening device 3-6;

(ii) each said rod 1 or 2 having an opening located in the central beam between the first arcuate configuration (Att. 1) and the second arcuate configuration (Att. 1), wherein all openings are directed through the inside wall surface thereof. Id., claims 1-9.

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Regarding claim 2, there is additionally present a fastening device 3-6 located in each opening.

Regarding claim 3, there is present a bushing (i.e., a wrist pin, crank, or similar part) in the first circle  $h_2$  formed by the first arcuate configurations. Id., col. 2, lines 9-13.

Regarding claim 4, there is present a bushing (i.e., a wrist pin, crank, or similar part) in the circle  $h_1$  formed by the second arcuate configurations.

Regarding claim 5, the rods 1 and 2 are assembled such that there is a gap (Att. 1) provided between the inside surface of the beams.

Regarding claim 6, the inside surface of each beam between the first and second arcuate configurations is flat (Att. 1).

Regarding claim 8, the fastener 4 or 5 in the opening located between the first arcuate configuration and the second arcuate configuration is capable of being adjusted to provide compression or tension. It has long been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 U.S.P.Q. 138 (CCPA 1946).

Regarding claims 9, the opening (Att. 1) located between the first arcuate configuration and the second arcuate configuration is not at the midpoint.

Regarding claims 10-12, referring the metal rods to the process steps such as shot peened, high pressure water treated, or chemically treated is not accorded patentable weight in the product-by process claim. It is well settled that the patentability of a product does not depend on its method of production. *In re Thorpe*, 227 USPQ 964, 966 (CAFC 1985); *In re Brown*,



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173 USPQ 685 (CCPA 1972); *In re Fessmann*, 180 U.S.P.Q. 324 (CCPA 1974); *Ex parte Edwards*, 231 USPQ 981 (BPAI 1986); and MPEP § 2113. See also Kotoc's method of forming the rods in col. 3, line 56 through col. 4, line 37.

14. Claim 1 and claim 2, as best understood, are rejected under 35 U.S.C. 102(b) as being *clearly* anticipated by Bugatti (US Patent No. 2,120,016).

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16. Claims 1, 5, 6, and claim 7, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Bonde et al. (Pub. No.: US 2004/0000216 A1 filed on June 28, 2002).

Regarding claim 1, Bonde teaches a rod assembly comprising:

(i) two symmetrical rods 560 and 570 of equivalent size; each said rod 560 or 570 manufactured of modified metal; each said rod 560 or 570 comprising a central beam having a near end and a distal end and an inside wall surface (unnumbered. See Attachment 2); each distal end terminating in a first arcuate configuration (Att. 2); each near end terminating in a second arcuate configuration (Att. 2) such that upon joining the rods 560 and 570 together the first arcuate configurations form a first circle 530 and the second arcuate configurations form a second circle 550; each of the arcuate configurations having a near end and a distal end wherein each distal end has an opening 670, 680 at the terminus thereof to receive a fastening device;

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(ii) each said rod 560 or 570 having an opening 580 located in the central beam between the first arcuate configuration (Att. 1) and the second arcuate configuration (Att. 1), wherein all openings 670, 680, 580 are directed through the inside wall surface thereof. Id., claims 1-20.

Regarding claim 5, the rods 560 and 570 are assembled such that there is a gap 580 provided between the inside surface of the beams.

Regarding claim 6, the inside surface of each beam between the first and second arcuate configurations is flat (Att. 2).

Regarding claim 7, the inside surface of each beam 560, 570 contains a channel 580 therein running *essentially* the length of the flat inside surface.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Vecellio (channel 126 in Fig. 10a-10c), Genouille'664 (rods 10 and 20), Everts (rods 21 and 22), Beveridge (Figs. 6 and 7), and Genouille'287 (rods 5).

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 703-308-3221. The examiner can normally be reached on Tuesday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on 703-308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

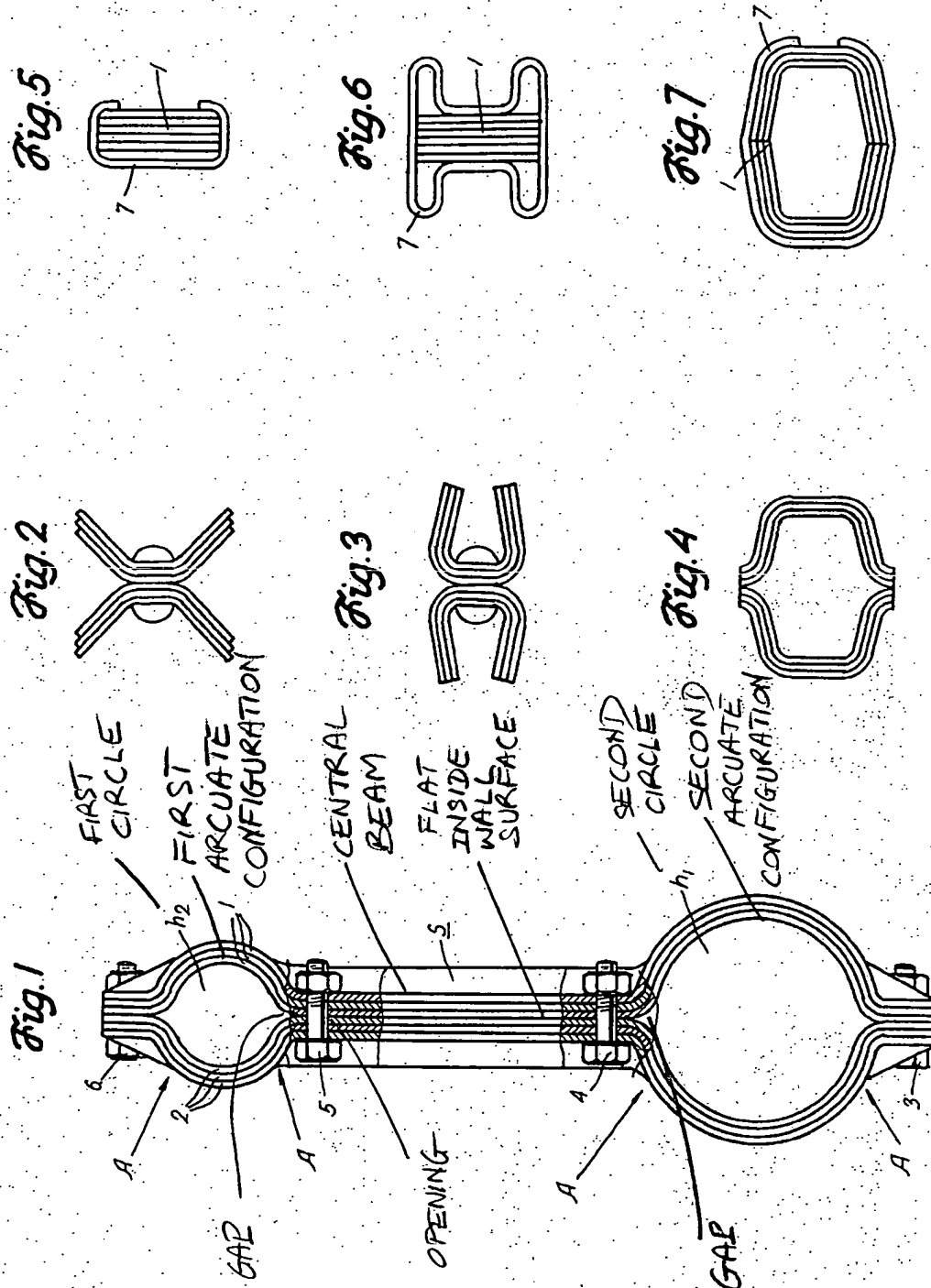
Luong

December 30, 2004



Vinh T. Luong  
Primary Examiner

# **ATTACHMENT # 1**



## **ATTACHMENT # 2**

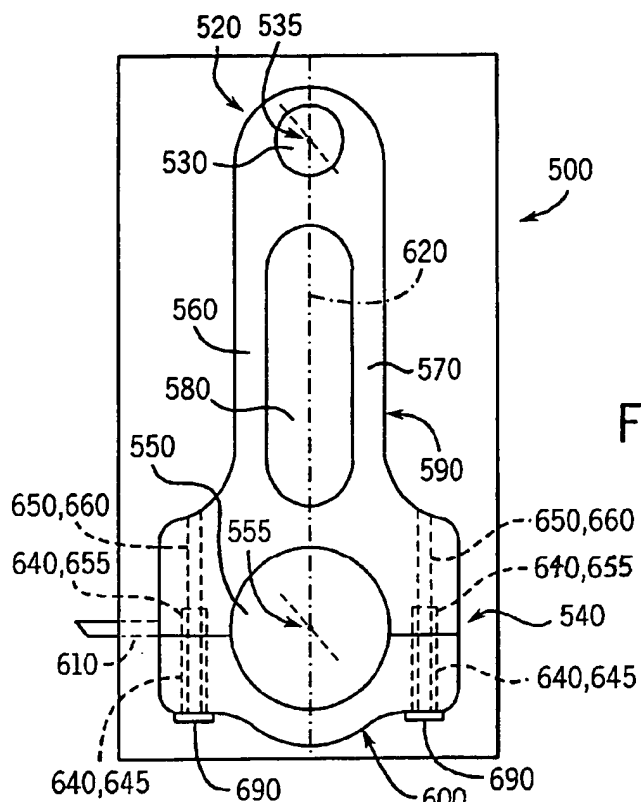


FIG. 9

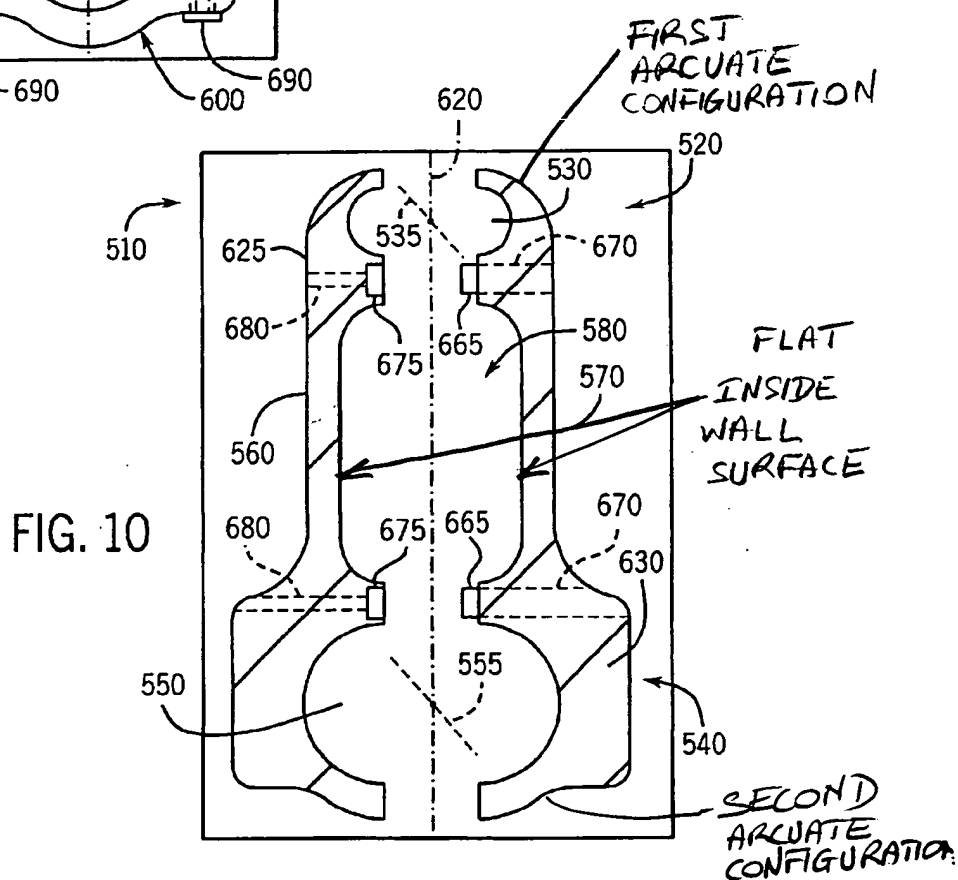


FIG. 10